

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MR. AND MRS. GREGORY SWECKER, Complainants, vs. MIDLAND POWER COOPERATIVE, Respondent.	DOCKET NO. FCU-99-3 (C-99-76)
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ORDER DENYING MOTION TO STRIKE

(Issued October 11, 1999)

On October 6, 1999, Midland Power Cooperative (Midland) filed a "Motion to Strike and Disregard Portions of Bob Welch Testimony and for Order Determining Respondent Need Not Defend Against Any New Issues Raised in Bob Welch Testimony."

Ordinarily, the undersigned would wait fourteen days before ruling on such a motion to give all parties the opportunity to respond to the motion. 199 Iowa Admin. Code § 7.7(11). However, delay on ruling on the motion could delay the procedural schedule and date for the hearing. Therefore, the motion will be ruled on without waiting the normal fourteen days, pursuant to § 7.7(11).

The Utilities Board (Board) issued an Order on June 23rd, in which the Board determined it had jurisdiction, granted the Sweckers' request for formal complaint

proceedings, and assigned the case to a presiding officer. In its Motion, Midland argues that the issues in the case were specified in the Board's Order, and should not be expanded by the intervenor, Mr. Bob Welch. Midland requests that the undersigned strike any testimony by Mr. Welch which deals with any subject beyond that covered in the June 23rd Order, and in particular, testimony regarding net billing and Tariff 26.18.

The Board's June 23rd Order is not a final determination of the issues in this case, but only a recitation of the issues which were known as of that date. Parties have a right to raise issues, conduct discovery, and present evidence regarding all issues in a contested case. Iowa Code §§ 17A.12, 17A.13, and 476.3. Mr. Welch is an intervening party in this case, pursuant to 199 Iowa Admin. Code 7.2(7).

Midland is correct that rule 7.2(8) provides that the granting of any petition to intervene shall not have the effect of changing or enlarging this issues specified in the notice of hearing, unless the Board shall, on motion, amend the same. Although Mr. Welch did not move to amend the issues when he filed his testimony, he is unrepresented by counsel. Furthermore, allowing him to intervene in the case without allowing him to raise issues particular to his case would serve little purpose. If he were not allowed to raise the issues here, he could raise the issues in a separate case based on the complaint he filed. Judicial economy is furthered if he is allowed to raise issues in this case rather than a separate one, when the issues are so similar to those raised by the Sweckers.

In addition, it does not appear that it would be overly burdensome to Midland to respond to the issues raised by Mr. Welch. Midland has several weeks before the hearing to respond to the net billing issue and the application of Tariff 26.18 to Mr. Welch. Of course, Midland is free to argue the applicability of Judge Gamble's Ruling on Petition for Judicial Review in its defense of the net billing issue. Tariff 26.18 is similar to tariff 26.16, and it appears that defending a discrimination charge under one tariff would be similar to defending a similar charge under the other tariff. There is adequate time before the hearing for Midland to respond to the issues raised by Mr. Welch.

IT IS THEREFORE ORDERED:

The motion filed by Midland Power Cooperative is hereby denied, and the issues in this case include those raised by Mr. Welch.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

Dated at Des Moines, Iowa this 11th day of October, 1999.